

STATE OF SOUTH CAROLINA

(Caption of Case)

Example: Application for a Class C Charter Certificate from
John Doe dba Doe's Limo

Application of Kenneth Landert d/b/a Kountry
Trans. (f/k/a Kenneth J. Landert d/b/a Kountry
Limo) for a Class C (Charter) Certificate of Public
Convenience and Necessity for Operation of Motor
Vehicle Carrier

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

TRANSPORTATION COVER SHEET

DOCKET

NUMBER: 2009 - 431 - T

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(Please type or print)

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NATURE OF ACTION (Check all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Application - Class C Taxi | <input type="checkbox"/> Request to Amend Scope of Authority |
| <input checked="" type="checkbox"/> Application - Class C Charter | <input type="checkbox"/> Request to Amend Tariff (rate Increase, etc.) |
| <input type="checkbox"/> Application - Class C Charter Bus | <input type="checkbox"/> Request to Amend Passenger Limit |
| <input type="checkbox"/> Application - Class C Non-Emergency | <input type="checkbox"/> Request |
| <input type="checkbox"/> Application - Class E Household Goods | <input type="checkbox"/> Exhibit |
| <input type="checkbox"/> Application - Class E Hazardous Waste | <input type="checkbox"/> Late-Filed Exhibit |
| <input type="checkbox"/> Application | <input type="checkbox"/> Letter |
| <input type="checkbox"/> Request for Extension to Comply with Order | <input checked="" type="checkbox"/> Proposed Order |
| <input type="checkbox"/> Request for Order Granting Authority to Obtain a Certificate of Public Convenience and Necessity to be Rescinded | <input type="checkbox"/> Publisher's Affidavit |
| <input type="checkbox"/> Request for Cancellation of Certificate | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Request for Suspension | <input type="checkbox"/> Response |
| <input type="checkbox"/> Request for Reinstatement | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Request for Name Change on Certificate | <input type="checkbox"/> Other: _____ |

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-431-T

IN RE: Application of Kenneth Landert d/b/a)	
Kountry Trans. (f/k/a Kenneth J. Landert)	ORDER GRANTING
d/b/a/ Kountry Limo) for a Class C (Charter))	CLASS C
Certificate of Public Convenience and)	CERTIFICATE
Necessity for Operation of Motor Vehicle)	
Carrier)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Application of Kenneth Landert d/b/a Kountry Trans., 1629 E. North Street, Suite 2, Greenville, South Carolina 29607 (the "Applicant") for a Class C (Charter) Certificate of Public Convenience and Necessity to render motor passenger service as follows:

BETWEEN POINTS AND PLACES IN SOUTH CAROLINA,

RESTRICTED TO: 5 PASSENGERS.

A Petition to Intervene was received in this matter on behalf of Yellow Cab Co. of Greenville, Inc. ("Yellow Cab" or "Intervenor").

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20(Supp. 2003) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (Supp. 2009) provides:

A motor vehicle carrier shall obtain a certificate from the Office of Regulatory Staff pursuant to the provisions of Article 3 of this chapter and pay the license fee required by Article 5 of this chapter before the motor vehicle carrier may: (1) transport persons or property for compensation on any improved public highway in this State; or (2) advertise as an operator for the transportation of persons or property for compensation on any improved public highway in this State.

3. 26 S.C. Code Ann. Regs. 103-102(3)(Supp. 2009) defines “Certificate of PC&N” as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

4. 26 S.C. Code Ann. Regs. 103-102(6) (Supp. 2009) defines “Class C Charter Certificate” as

A Class C certificate required to be held by service provider engaged in passenger for hire transportation using any motor vehicle equipped to carry up to fifteen (15) passengers and accepting passengers exclusively on a pre-arranged basis and which remuneration is determined on an hourly basis. A Class C Charter Certificate shall be denominated “Class C-Charter.”

5. 26 S.C. Regs. 103-102(15) (Supp. 2009) defines “Limousine” as

Any motor vehicle equipped to carry up to fifteen (15) passengers which exclusively engages in "Class C Charter" operations. Limousines shall be required to obtain a Class C – Charter certificate.

26. S.C. Code Ann. Regs. 103-112 defines a "Class C Motor Carrier" as

a common carrier by motor vehicle of passengers, generally known as "taxi cabs," "charter buses," "charter limousine," and "non-emergency vehicles," which does not operate over regular routes or upon regular schedules, and which does not, in any way, solicit or receive patronage outside of the radius of two miles of the corporate limits of the city in which it is licensed to do business, except that upon such highways as are not served by a Class A or B motor carrier. A Class C motor carrier must obtain a Certificate of PC&N from the ORS after approval by the Commission, except "charter buses," which must obtain a Charter Bus Certificate.

6. 26 S.C. Code Regs. 103-133 (Supp. 2009) is entitled "Proof Required to Justify Approving an Application" and provides in subsection (4) as follows:

An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of passengers by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided however, if an intervenor shows or if the commission determines that the public convenience and necessity is already being served, the commission may deny the application. The following criteria should be used by the commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

a. FIT. The applicant must demonstrate or the commission determines that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant and that applicant is financially fit to do business as a certified carrier. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agree to operate in compliance with these statutes and regulations.

b. ABLE. The applicant should demonstrate that he has purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is

applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the commission's insurance requirements and the costs associated therewith.

c. WILLING. Having met the requirements as to “fit and able”, the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought. The applicant must demonstrate a willingness to comply with all commission regulations.

EVIDENCE OF RECORD

A hearing on the Application was held on February 2, 2010 at 2:30 p.m.. The Honorable Elizabeth B. Fleming presided. Present representing the Applicant was John J. Pringle, Jr. Appearing on behalf of the intervenor was Dallas D. Ball. Appearing on behalf of the Office of Regulatory Staff (“ORS”) was Jeffrey M. Nelson.

Testifying for Applicant was Kenneth J. Landert, the owner of the company. Mr. Landert testified regarding his previous experience as a driver for Yellow Cab, as well as for Eastside Limo Service in Greenville, and Atchison Transportation Services of Spartanburg. The Applicant provided a copy of his 10-year driving record showing that he possesses one current adjusted point, as well as a certificate demonstrating that Mr. Landert had completed a defensive driving course. The record reflects that there are no outstanding judgments against the Applicant, and the Applicant provided a hearing exhibit further showing that he has no criminal convictions.

Applicant conceded that he had been ticketed by the ORS on or about October 18, 2009 for operating without authority, and further testified that he had not performed any transportation for hire since being cited by the ORS. Mr. Landert also described an additional vehicle he has purchased to use in his business, and testified that he has obtained liability insurance for his vehicles in amounts that meet this Commission's

requirements for same. Mr. Landert also described his significant investment in vehicles, insurance premiums, and other costs in furtherance of this business. Mr. Landert also provided testimony, that there is a current need for limousine charter services in the area for which Applicant seeks authority. Mr. Landert testified that he would comply with all applicable statutes, Commission rules, and orders if he obtains certification from the Commission.

Ms. Patty Vowell of the ORS also testified. Ms. Vowell testified regarding her familiarity with the Applicant, and particularly about the Applicant's cooperation with the ORS and efforts to ensure that his operations going forward complied with all applicable requirements of South Carolina law. Ms. Vowell testified regarding her investigation of Applicant that resulted in the issuance of a ticket for operating without appropriate authority. Ms. Vowell testified that the ORS had not received any complaints regarding the Applicant since the ORS cited him, and testified that to her knowledge Applicant had not performed any transportation without authority since that time.

Ms Vowell further testified that prior to citing Applicant on October 18, 2009, she had received several telephone calls from John Bacot, an officer of the Intervenor, regarding the alleged illegal operations of the Applicant. Ms Vowell testified that following her citation of the Applicant on October 18, 2009, she received no complaints regarding Applicant, from Intervenor or any other person.

Significantly, Ms. Vowell testified that that in her opinion the Applicant is fit, willing, and able to provide the services sought by Applicant in this Docket.

The Intervenor presented several witnesses.

Testifying for the Intervenor were John Bacot, owner and manager of Yellow Cab and Keith Mahaffey, Don Grant and Michael Evans, cab drivers for Yellow Cab.

Grant, Mahaffey, and Evans provided testimony regarding alleged illegal operations of Applicant in various locales and at various times. These witnesses also testified about the effect that another passenger carrier might have on their ability to provide their services.

Mr. Bacot provided additional testimony about the Applicant and his operations in the City of Greenville and in Greenville County. In addition, Mr. Bacot testified regarding Yellow Cab's current business operations and revenues relative to those operations in the past, and gave testimony that the market could not support another passenger carrier in the Greenville area.

FINDINGS OF FACT

After full consideration of the Application, the testimony and documentary evidence presented at the Hearing, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Kenneth Landert d/b/a Kountry Trans., seeks authority to operate as provider of Class C – Charter services.
2. The Applicant is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated since the record contains (1) a certification that the Applicant is familiar with the regulations and statutes governing for-hire motor carrier services; (2) evidence that there are no outstanding judgments or criminal convictions against the Applicant; and 3) the hearing exhibits

showing the Applicant's driving record and his defensive driving certificate completion. "Able" was demonstrated by the evidence of record which reveals that Applicant has the present ability and the necessary vehicles and personnel to provide charter limousine services, and has obtained insurance that meets the minimum requirements set by this Commission. The evidence of record, and particularly the Applicant's investment in his business to-date, indicates that the Applicant possesses sufficient financial resources to conduct for-hire motor carrier operations in South Carolina. Moreover, "willingness" was demonstrated by the filing of the application and the testimony of the Applicant demonstrating the Applicant's desire to provide these services in South Carolina. The ORS witness also opined that the Applicant possesses the requisite fitness, ability and willingness of the Applicant to provide the services requested.

3. The Intervenor witnesses offered lengthy testimony regarding their view of the Applicant's fitness and ability. In particular, the Intervenor witnesses claim that Applicant has operated illegally, both in violation of the Commission's regulations, as well as those of one or more municipalities. However, even if the Commission were to assume that these concerns are valid and these allegations are true, (and that testimony is disputed by the Applicant), we weigh the Applicant's testimony and actions since filing the application in this Docket against the Applicant's past history. The Applicant has demonstrated that he understands the importance of regulatory compliance, by filing and pursuing this application, working closely with the ORS to ensure that his operations meet all applicable requirements, making investments (e.g. in a vehicle and in obtaining insurance) consistent with that commitment, and providing testimony to that effect at the

hearing. Therefore, we find that the concerns of the interested Intervenor witnesses are outweighed by both the actions and the testimony of the Applicant contained in the Record, as well as the opinion of the ORS as expressed through Ms. Vowell. In sum, we are convinced that the Applicant presently is fit, willing, and able to provide the services he seeks.

4. The Intervenor did not show, and this Commission does not otherwise find, that the public convenience and necessity is already being served. The evidence submitted by the Intervenor provided an insufficient basis for ruling in its favor. All of the witnesses for the Intervenor testified that the Applicant's services would threaten its regulated business. As a threshold matter, Intervenor holds a Class C Taxi Certificate from this Commission. The Applicant, as stated above and herein, seeks a Class C Charter Limousine Certificate. We find that the Intervenor did not provide credible evidence that the Applicant's limousine services would threaten its taxi business.

Moreover, assuming that allowing the Applicant to provide the authority he seeks herein would threaten Intervenor's business, the South Carolina Supreme Court has made clear that possible future economic harm resulting from increased competition, while relevant, is not, in and of itself, sufficient justification for denial of the application of a motor carrier applicant who has shown itself to be otherwise fit, willing and able to perform the services for which it seeks certification. *Welch Moving and Storage Co., Inc. v. Pub. Serv. Comm'n of South Carolina*, 301 S.C. 259, 391 S.E.2d 556 (1990) ("*Welch*"). Like the carriers who opposed the applicant in *Welch*, Intervenor provided no "expert testimony or statistical surveys", 301 S.C. 262, 391 S.E.2d 557, to support its

contention that the public convenience and necessity is being served. On the contrary, the various Intervenor witnesses offered their opinion that the Applicant would harm the Intervenor's business, which is clearly limited to the Greenville area. The factual similarities between *Welch* and the instant Docket compel the Commission to apply the same reasoning and reach the same result here as did the South Carolina Supreme Court.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the Applicant has demonstrated that it meets the requirements of fit, willing, and able as set for the in 26 S.C. Code Ann. Regs. 103-133.
2. The Commission does not conclude that the public convenience and necessity is already being served by existing Class C Charter Carriers.
3. Based on the conclusions above, that the Applicant has demonstrated that it meets the requirements of fit, willing and able, and that the public convenience and necessity is not already being served with respect to the services proposed by Applicant, the Commission concludes that a Class C Certificate of Public Convenience and Necessity should be granted and that Applicant should be granted authority to perform Class C Charter services as specified in its Application. The grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Kenneth Landert d/b/a Kountry Trans. for a Class C Charter Certificate of Public Convenience and Necessity is hereby approved.

2. That the Applicant file or cause to be filed, with the Office of Regulatory Staff (ORS) the proper license fees, proof of liability insurance (i.e. "Form E"), and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through R.103-241 (Supp. 2009) of the Commission's Rules and Regulations for Motor Carriers and 23A S.C. Code Ann. Regs. 38-400 through 38-503 (Supp. 2009) of the Department of Public Safety's Rules and Regulations for Motor Carriers, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That failure of the Applicant to either (1) complete the certification process by complying with the requirements of filing with the ORS proof of appropriate insurance and the payment of license fees and such other information required by law within 60 days of the date of this Order or (2) request and obtain from the Commission additional time to comply with the requirements stated above, may result in the authorization approval in this Order being revoked.

4. That upon compliance with the filing of information as required by S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 26 (Supp. 2009), as amended, a Certificate shall be issued by the ORS to the Applicant authorizing the motor carrier services granted herein.

5. That prior to compliance with the above-referenced requirements regarding the filing of certain information with the ORS and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Elizabeth B. Fleming, Chairman

ATTEST:

/s/
John E. Howard, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-431-T

IN RE:)	
)	
Application of Kenneth Landert d/b/a)	
Kountry Trans. (f/k/a Kenneth J. Landert)	CERTIFICATE OF SERVICE
d/b/a Kountry Limo) for a Class C)	
(Charter) Certificate of Public)	
Convenience and Necessity for)	
Operation of Motor Vehicle Carrier)	

This is to certify that I have caused to be served this day, one (1) copy of the **Proposed Order of the Applicant** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC AND 1ST CLASS MAIL SERVICE

Dallas Ball, Esq.
Dallas D. Ball, P.C.
690-C Columbiana Blvd.
Suite 200
Columbia SC 29212



Carol Roof
Paralegal

February 16, 2010
Columbia, South Carolina